

IN SENATE OF THE UNITED STATES.

FEBRUARY 3, 1848.

Submitted, and ordered to be printed.

Mr. WESTCOTT made the following

REPORT:

*The Committee on the Judiciary, to whom was referred the memorial of Joseph Burchard, of New York, report:*

That the memorialist alleges he was surety, on certain duty bonds to the United States, for one John Rowlet, who failed, and that he had to pay the bonds, amounting to \$6,258 55; that he became thereby entitled, under the act of 2d March, 1799, [Statutes at Large, volume 1, page 675, chapter 22, section 65,] to be substituted to all the rights of priority or preference of the United States, as a creditor for such bonds, against the estate of Rowlet, who was insolvent. This is the first branch of the case. The evidence adduced to the committee, to sustain it, is entirely inconclusive. There are *eight* bonds, dated in 1816, (upwards of *thirty-one* years ago,) filed with the petition, and their aggregate amount is \$6,258 55, but there is no evidence that Burchard paid but one of them. On the back of *that one* is a receipt from the cashier of the custom-house, for its amount, dated in 1817. The long time that has elapsed since this claim originated is calculated to excite suspicion of its fairness; the petition is not sworn to, and is drawn in quite general terms, and, except the bonds above mentioned, there are no bonds filed with it of any authenticity. Two accounts or statements, by petitioner, are the only other papers filed. Looking to the usage and custom of prudent merchants of requiring security from those for whom they become surety on duty bonds, evidence should be adduced, or, at least, the oath of the petitioner, that he was not indemnified in any wise by Rowlet, and especially when the neglect to present the claim for thirty odd years is not accounted for and excused. If it has been before presented to Congress, it should have been stated, and the proceedings referred to.

The petitioner, secondly, alleges, that the government of the United States, since the payment of said bonds by him, notwithstanding his protests and remonstrances to the officers of the treasury, &c., being indebted to said Rowlet "upwards of

\$28,000," on account of French spoliation claims, after deducting the sum of \$17,287 82, which Rowlet owed the United States, as principal and *surety*, on other duty bonds *unpaid*; paid over the residue of said \$28,000, to Mr. Law, who was Rowlet's agent and attorney for the collection of said claims. The petitioner contends that all the duty bonds due from Rowlet are entitled to preference *according to their respective dates*, and that under such rule he was entitled to have his \$6,258 55 paid out of the amount of \$17,287 82, so retained by the United States, in preference to several bonds of *subsequent dates*, discharged by such retention, and also in preference to those upon which Rowlet was not the principal, but merely *surety*. He further alleges that the residue of the \$28,000 paid the agent or attorney of said Rowlet, after said deduction, should also have been retained by the United States, and applied to the payment of his said bonds. The committee might content themselves with the remark that there is not a scintilla of proof adduced in this case of these allegations, forming the second branch of this case; but they deem it proper to take this occasion to suggest that the practice of presenting petitions framed in general language, not specific as to dates or amounts, and not supported by evidence of any kind whatsoever, sometimes referring generally to published public documents, leaving the committee to search for them, and sometimes referring to papers in the departments, and expecting the committee to hunt them up, and often less satisfactory references, cannot be too strongly reprehended.

But if all the allegations were conceded to be true, as petitioner has made them, the committee are strongly inclined to the opinion that the prayer of the petitioner should not be granted, and that the right of priority or preference of the United States over petitioner, existed with equal force, as over any other creditors, and the fact of his being a *duty bond surety creditor*, does not, *with respect to the United States*, give him any preference over duty bonds of a *subsequent date*, or duty bonds upon which Rowlet was merely *surety*.

As it regards the surplus paid Mr. Law, it is admitted in the petition, that the ground on which the amount was paid to him was, that such amount was his commission as attorney for collecting the French spoliation claims. There can be no doubt that such amount was a charge on the fund having priority over any of the debts even then due the United States. It was not a mere lien upon the fund; such amount was, in fact, no part of the fund to which the preference of the United States attached. That fund was the residue of the amount of the claims after such commissions were deducted. Those commissions, on well settled principles and rules, are to be allowed and paid before any other claims. The charge of Mr. Law, the attorney, it is said, by the petitioner, was "*exorbitant*." This, if correct, affords no grounds for asking relief, as prayed, of Congress. The judicial tribunals were open to petitioner when the charge was preferred, and afforded him full remedies, as well to correct any "*exorbitancy*" in such charge, as to prevent the payment by the treasury officers to him, and the receipt

by him, of any moneys to which he had no just or legal claim, and to which the petitioner had such claim. It is not only to be presumed, but is not doubted, that the treasury officers, in this case, acted properly. The committee, therefore, report the following resolution:

*Resolved*, That the prayer of the memorial of Joseph Burchard should not be granted.

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